

**CALIFORNIA BUILDING STANDARDS COMMISSION
MEETING MINUTES**

**April 22, 2014
9:20 a.m.**

1. CALL TO ORDER

Chair Batjer called the meeting to order at 9:20 a.m. at the Department of Consumer Affairs, 1625 North Market Boulevard, First Floor Hearing Room, Sacramento, California 95834.

ROLL CALL

Commissioners Present:

Secretary Marybel Batjer, Chair
Steven Winkel, Vice-Chair (arrived 9:20 a.m.)
Jim Barthman
Larry Booth
D. Malcolm Carson
Elley Klausbruckner
Sheila Lee
Erick Mikiten
Cheryl Roberts
Kent Sasaki
Richard Sierra (arrived 9:20 a.m.)

Also Present:

Jim McGowan, Executive Director
Michael Nearman, Deputy Executive Director
Misty Brooks
Alex Holtz
Leann Pressley
Alex Hunter

Chair Batjer announced that a quorum was present.

PLEDGE OF ALLEGIANCE

Commissioner Sasaki led the Commission in the Pledge of Allegiance.

Chair Batjer proceeded to swear in the newly-appointed and re-appointed Commissioners.

Chair Batjer invited the Commissioners to introduce themselves.

Commissioner Carson, a resident of Los Angeles, is an attorney and land use planner.

Commissioner Roberts, serving her second term at the BSC, is a Battalion Chief at the Rancho Cucamonga Fire Department.

Commissioner Sasaki is a structural engineer serving his third term on the BSC.

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Vice-Chair Winkel is serving his third-term and this is his fourth term. He is an architect and works for a small company in building and accessibility consulting.

Commissioner Barthman, serving his fourth term, represents public members. He has previously worked as a building official and an engineer.

Commissioner Lee, serving her first term and is the Building Official for the City of Santa Clara.

Commissioner Mikiten, serving his second term, is an architect with a small practice in Berkeley. He advocates for multi-family housing, affordable housing, and universal design.

Commissioner Booth, serving his first term and is a mechanical engineer from Sacramento.

Commissioner Klausbruckner works in fire code compliance, specializing in hazardous materials, industrial business, and biotechnology. She is serving her first term.

Commissioner Sierra, serving his second term and is a business manager for the Laborers International Union of North America.

2. APPROVAL OF THE NOVEMBER 6, 2013 AND DECEMBER 18, 2013 MEETING MINUTES

Chair Batjer introduced this item and requested discussion from the commissioners. No discussion was held, and action was taken as follows:

MOTION: Commissioner Barthman moved approval of the November 6, 2013 meeting minutes. Commissioner Lee seconded. Motion passed with three abstentions.

Chair Batjer introduced this item and requested discussion from the commissioners. No discussion was held, and action was taken as follows:

MOTION: Vice-Chair Winkel moved approval of the December 18, 2013 meeting minutes. Commissioner Barthman seconded. Motion passed with three abstentions.

3. PROPOSED EMERGENCY STANDARDS ADOPTIONS AND APPROVALS

a) **The Office of the State Fire Marshal – (SFM EF 01/14):** This proposed building standard would delay the effective date of the UL-1703 standard relative to rooftop mounted solar photovoltaic solar systems/modules relative to Part 2 of Title 24.

- i. **Action for Finding of Emergency**
- ii. **Action for the Adoption of the Proposed Regulations**

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- b) **The Office of the State Fire Marshal – (SFM EF 02/14):** This proposed building standard would delay the effective date of the UL-1703 standard relative to rooftop mounted solar photovoltaic solar systems/modules relative to Part 2.5 of Title 24.

i. Action for Finding of Emergency

ii. Action for the Adoption of the Proposed Regulations

Chair Batjer summarized the proposed emergency rulemakings and stated that testimony from the Office of the State Fire Marshal on items 3a and 3b would be combined as these two items are interrelated, however the commission would take action on each item individually. The commission would first consider the finding of emergency and if acceptable, would then consider the proposed change to the building standard. Chair Batjer asked that representatives from the Office of the State Fire Marshal introduce themselves and then present its proposed emergency rulemaking to the Commission.

Tonya Hoover, State Fire Marshal, introduced herself, provided opening remarks and then introduced Kevin Reinertson, Division Chief of Code Development and Analysis, as the presenter of the proposals. Mr. Reinertson introduced Deputy Andrew Henning, assisting Mr. Reinertson, and proceeded to explain the proposed emergency rulemakings to amend the California Building Code and California Residential Code as follows:

It is an emergency rulemaking package intended to prevent the prohibition of actually installing solar systems on buildings.

The new UL-1703 standard new fire classification requirements include PV panels and systems. The manufacturers of the panels have not had adequate time for Underwriters Laboratory or the other testing laboratories to do testing to have the PV panels listed for availability on the market.

There are well over 540 building departments and approximately 960 fire departments statewide; without this specific regulation there will be that many differing opinions.

This rulemaking gives specific guidance to the manufacturers for testing, as well as a drop dead deadline. It also gives building and fire officials the standards they can go back to. Whereas complying with the code today we will see jurisdictions potentially prohibiting solar installations.

Chair Batjer asked Deputy Andrew Henning to introduce himself whether he is or is not speaking today. Deputy Henning introduced himself as a new deputy with the Code Development and Analysis Division, this is his first meeting and expressed that it was good to meet all the commissioners. Chair Batjer welcomed Mr. Henning, and thanked the State Fire Marshal for being at the meeting and acknowledged the good work that its staff does.

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Commissioner Comments and Questions

Chair Batjer asked of the commissioners whether any had questions of Mr. Reinertson at this time.

Vice-Chair Winkel confirmed with Mr. Reinertson that pushing the applicability of the UL standard back to 2015, that we're still left with standards that the local jurisdictions could apply. Mr. Reinertson confirmed that this is the case and in effect would go back to the 2010 California Building Standards Code – UL-790, which is really a roofing standard. But for those local jurisdiction that don't have an adopted ordinance that does something different from the state code, allows in those State Responsibility Areas that require a Class A roofing assemblies or very high fire severity zones, it allows for those Class A roof assemblies to have constructed on top of it a Class C solar module complying with UL 790. The problem we have is applying a Class A requirement to a solar panel complying with UL 790, and a Class A roofing assembly. It doesn't seem to make sense, but testing has revealed that where a Class A panel on top of a Class A roof assembly, it created an oven effect causing two-thirds of the roofing assemblies to fail. The new UL 1703 fire classification provisions looks at the panels as a system, it treats them differently. Allowing this rulemaking to go forward kind of puts us back where we were last year, but at the same time not be overly restrictive.

Chair Batjer asked whether Commissioner Lee had a question.

Commissioner Lee stated that she is in support of this rulemaking so people can continue to install PV panels.

Commissioner Lee asked whether the State Fire Marshal had looked into the availability of the Class A product at all when it proposed this new rulemaking. Mr. Reinertson clarified that Commissioner Lee was addressing the adoption of the 2013 code. Commissioner Lee confirmed this was the question. Mr. Reinertson explained that industry was in the process of doing this. Additionally Mr. Reinertson explained that while the State Fire Marshal was developing this proposed change to the 2013 code, that it had met with industry during the development of the 2015 Fire Code in Atlantic City was occurring, that development of an amendment to include the UL 1703 standard into the 2015 code was being discussed and that industry was aware of the standard and of California moving it forward prior to the actual effective date at the national level. Mr. Reinertson explained that the State Fire Marshal had done outreach to many manufacturers, though not every single manufacturer.

Commissioner Lee asked, regarding this emergency proposal, if he was pretty confident that it will be available, assuming that it would be effective by July 1. Mr. Reinertson explained that the rulemaking would delay the effective date of the UL 1703 standards until January 1, 2015. Commissioner Lee asked whether he was fairly confident that there will be sufficient product available by that date. Mr. Reinertson explained that UL stated there are manufactures that have their product in for testing, and that there are several manufacturers have already obtained approval, although not enough for what we're doing in California. Manufacturers were put on notice, first when the 2013 codes were adopted, but also when the State Fire Marshal issued an information bulletin giving clarification to assist local enforcing officials, and which notified industry that the State Fire Marshal was moving forward with the adoption of emergency regulations.

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Commissioner Sasaki voiced the same concern as Commissioner Lee, it's the 22nd of April and January 1, 2015 is coming up soon. We want to be sure that if we go forward with this effective date would the manufacturers be able to provide product so that the date would not have to be extended again? Mr. Reinertson stated that he would not want to have to bring forward an extension to the emergency regulation package.

Chair Batjer interjected that perhaps persons from the industry that have asked to speak could address this question. Mr. Reinertson agreed.

Chair Batjer asked for assurance that there would be no health and safety issue in the code between now and the effective date of January 2015. Mr. Reinertson stated that industry itself was one of the major factors in the UL-1703 fire classification revision. Prior testing reflected issues for putting a Class A panel on a Class A roof assembly. The testing demonstrated that installing a Class C panel on a Class A roof assembly was okay; there is still a level of safety provided under the 2010 code.

Vice-Chair Winkel noted that when reactivating 1703 on January 1st there is an errata necessary in the code as 1703 is not listed in the standards chapter. Mr. Reinertson confirmed he is working with the commission staff on errata package.

Commissioner Roberts asked if anything else could be done to help get the PV manufacturers up to speed during this short timeframe. Mr. Reinertson replied that should the ruling be approved, the Office of the State Fire Marshal intended to issue an information bulletin, and to work with the California Solar Energy Industries Association (CALSEIA) and Underwriters Laboratory to vet the information to all manufacturers.

Public Comment

Bob Raymer, Senior Engineer with the California Building Industry Association, voiced strong support of the adoption of this proposal as an emergency to Parts 2 and 2.5. He explained how more and more residential projects are including solar as a standard feature. Many of the local requirements are either Class A or Class B, and unfortunately the strict reading of the national code in California could easily create a problem with approval of the solar application under the new provision. Many jurisdictions have not yet noticed this issue. However they may begin to recognize this.

Bernadette Del Chiaro, CALSEIA Executive Director, voiced support of the measures and appreciated the sensitivity to an emerging industry shown by the Commissioners in their comments. She also acknowledged that the industry is concerned about safety and quality. Regarding the January 2015 deadline, UL and other testing labs have assured that they are ready to run three shifts in order to accommodate the industry's needs. They have also assured CALSEIA that the changes that need to be made essentially to the racking components of the system are not going to be difficult to meet.

Chair Batjer asked whether there were any others who wished to speak to these items (included teleconference line). Hearing none, Chair Batjer returned the matter to the commissioners, and summarizing item 3a to first consider the finding of emergency; requested motion.

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MOTION: Vice-Chair Winkel moved approval of the Office of the State Fire Marshal's finding of emergency (SFM EF 01-14). Commissioner Lee seconded. Motion passed unanimously.

Chair Batjer requested the commissioners consider for adoption the Office of the State Fire Marshal's proposed emergency rulemaking; requested motion.

MOTION: Commissioner Barthman moved approval of the Office of the State Fire Marshal's proposed change to the subject building standard (SFM EF 01-14). Commissioner Sierra seconded. Motion passed unanimously.

Chair Batjer summarized item 3b to consider the Office of the State Fire Marshal's finding of emergency; requested motion.

MOTION: Vice-Chair Winkel moved approval of the Office of the State Fire Marshal's finding of emergency (SFM EF 02-14). Commissioner Roberts seconded. Motion passed unanimously.

Chair Batjer requested the commissioners consider for adoption the Office of the State Fire Marshal's proposed emergency rulemaking; requested motion.

MOTION: Commissioner Sasaki moved approval of the Office of the State Fire Marshal's proposed change to the subject building standard (SFM EF 02-14). Commissioner Carson seconded. Motion passed unanimously.

Tanya Hoover, State Fire Marshal, reiterated the importance of the Office of the State Fire Marshal's commitment to seeing solar energies move forward while maintaining a fire-safe environment for California.

4. PROPOSED EMERGENCY STANDARDS ADOPTIONS AND APPROVALS

- a) The Office of Statewide Health Planning and Development – (OSHDP EF 01/14)**
 - i. Action for Finding of Emergency**
 - ii. Action for the Adoption of the Proposed Regulations**

Chair Batjer summarized the proposal and reviewed the necessary actions and requested that a representative from the Office of Statewide Health Planning and Development present its proposed emergency rulemaking to the Commission.

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Glenn Gall, Regional Supervisor with the Office of Statewide Health Planning and Development, Facilities Development Division, Building Standards Unit introduced himself and summarized the proposed rulemaking. Mr. Gall stated that this rulemaking and finding of emergency were based on a statutory mandate. Once Section 1226.7 of Part 2 of the California Building Code (CBC) is repealed, there is no further action. It is being proposed as an emergency standard because currently, the requirements in the code are inoperative; the law is clear that they are not enforceable.

Chair Batjer thanked Mr. Gall and asked whether commissioners had any comments or questions for Mr. Gall. No questions or comments.

Chair Batjer asked whether there were any members of the public that wished to comment (included teleconference line). No comments.

Chair Batjer returned the matter to the commissioners, and summarizing item 4a to first consider the finding of emergency; requested motion.

MOTION: Commissioner Sierra moved approval of the Office of Statewide Health Planning and Development's finding of emergency (OSHDP EF 01-14). Commissioner Lee seconded. Motion passed with one vote of nay.

Chair Batjer requested the commissioners consider for adoption the Office of Statewide Health Planning and Development proposed emergency rulemaking; requested motion.

MOTION: Commissioner Sasaki moved approval of the Office of Statewide Health Planning and Development's proposed change to the subject building standard (OSHDP EF 01-14). Commissioner Roberts seconded. Motion passed unanimously.

Vice-Chair Winkel commented that he didn't understand why this had come about and still doesn't, however the only reason he recorded his vote as negative and he intends to vote in favor of the motion, is because the issue had been broken by the Legislature and it is up to us to now fix-it. But it was broken by the Legislature messing around in a bunch of gears where it doesn't belong.

5. COMMISSION COMMITTEES

- **Code Change Committee**
- **Publication, Communication & Training Committee**
- **Policy and Management Committee**
- **Seismic Committee**
- **Appeals Committee**
- **Green Building Standards Committee**

Executive Director McGowan stated that staff had asked the Commissioner to consider the six standing committees comprised of commissioners regarding their level of activity. A number of these committees are stagnate, some have met some have not.

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The Code Change Committee is the most active, matching most often to address recommended appointments to the Code Advising Committees.

The Publication, Communication & Training Committee to our knowledge has not met.

The Policy and Management Committee met a number of years ago during development of the Strategic Plan.

The Seismic Committee no record of meeting.

The Appeals Committee is codified – it is in regulation and must be a standing committee.

The Green Building Standards Committee was successfully utilized when CALGreen was developed back in 2008.

Executive Director McGowan stated that staff was recommending that the Commission consider all committees except Code Change and the Appeals Committees as ad hoc. Staff was also recommending for the Code Change Committee to change its name, as it is more of an executive or administrative committee.

Commissioner Klausbruckner asked whether it would be appropriate to keep the Code Change Committee, but change the name of the committee.

Chair Batjer confirmed that such an action would be acceptable.

Vice-Chair Winkel suggested that there was a need for a Code Adoption Committee. He also pointed out that, for the 2015 cycle, we will have to adopt the International Existing Building Code (or some California variant) because Chapter 34 in the California Building Code – Existing Building Provisions – has been abolished. He also noted that the International Green Construction Code is becoming mature enough that the BSC could consider merging it with the California Green Code. Vice-Chair Winkel concluded that these two code provisions need to be examined by some committee.

He continued that the essential function of the Code Change Committee is selection of applicants for the Code Advisory Committees – basically the interface between the BSC and the agencies. His suggestion was to combine the Green Building Standards Committee and the Code Change Committee, and retitle it as the Code Adoption Committee.

Chair Batjer summarized the course of action to take:

Combine the responsibilities of the Code Change Committee and the Green Building Standards Committee into a Code Adoption Committee.

Discern who would like to serve on the Appeals Committee and the Code Adoption Committee. (The Commissioners noted that through the years, appeals have been few and far between.)

Chair Batjer asked Executive Director McGowan whether this item required a vote. Mr. McGowan responded that no vote was required, as this is a discussion item only.

Commissioner Klausbruckner asked for clarification whether Commissioner Winkel was recommending a new Code Adoption Committee and changing the name of the Code

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Change Committee to Administrative Committee. Commissioner Winkel responded that he proposed to combine the Code Change Committee and Green Building Committee into a single Code Adoption Committee, having the purview to look at future code as model code books, but also appointing persons to the Code Advisory Committees.

Commissioner Lee suggested there is no need for a Seismic Committee, and consider the name Code *Advisory* Committee rather than Code *Change* Committee. Also clarified that the suggestion for the use of

Commissioner Roberts suggested that the use of Code Advisory Committee may be confusing with the Code Advisory Committees. Executive Director Jim McGowan stated that it may very well be confusing.

Chair Batjer directed staff to discern Commissioner interest in being selected to the two committees.

Commissioner Barthman stated that he would like to see some of these as standing committees those that meet on a regular basis or have a heavy responsibility, the other committees could be Ad Hoc. Chair Batjer agreed that two of the committees could be combined as a standing committee along with the Appeals Committee, and then Ad Hoc committees could be formed as needed.

Commissioner Barthman asked whether there would be a problem if there were too many commissioners were on a committee whether that could constitute a commission meeting.

Alex Holtz, Commission Counsel, indicated that if the committees have three members then the Bagley-Keene Open Meeting Act would apply. We would have to comply with the Bagley-Keene.

Commissioner Winkel follow up to Commissioner Lee's comment regarding the adoption of the codes is under the purview of the state agencies, when developing the California Green Building Standards Code the Commission had acted more like an agency than in the past. Clearly the State Fire Marshal, for example, has an existing building responsibility but it is not exclusive. Existing building go not only to fire and life safety, but accessibility and some of the state agencies may overlap, but he's not sure that any one agency has the whole shooting match. As the green code it's the same thing, it goes across all the areas of the code. He is thinking that the BSC as an agency has a role in that and he is looking to staff for to give advice on how to implement that.

Commissioner Lee responded that the reason for the comment is not that we'd necessarily be looking at the Green Building Code in the future. There can be other codes such as the solar code from IAPMO.

Chair Batjer summarized that staff would contact each commissioner individually about your interest and come back at the next meeting with advice on the formation of combining two and continuing the Appeals Committee.

6. CODE ADOPTION CYCLES

- **Update on the 2013 Intervening Code Adoption Cycle**

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- **Overview of the 2015 Triennial Code Adoption Cycle**

Chair Batjer summarized the presentation and introduced Michael Nearman, Deputy Executive Director for the Building Standards Commission.

Deputy Executive Director Nearman reported that the 2013 Intervening Code Adoption Cycle had gone well.

Staff had completed the Code Advisory Committee reviews.

They had established two 45-day comment periods, one specifically for access compliance. The first comment period begins on March 21 through May 5th and the second on April 25 through June 9th.

Upon completion of the comment periods, BSC staff will process all material and prepare staff reports and the final rulemaking packages for Commissioner review in preparation of the July 22nd BSC meeting.

The publication date is scheduled for January 1, 2015, which triggers the minimum 180-day effective period, making it effective July 1, 2015, for the effective date for the Intervening Code Adoption Cycle supplement.

For the 2015 triennial cycle:

Staff will announce the cycle at least 180 days before the scheduled submittal to the Commission.

When the Coordinating Council meets, agency representatives will decide which codes will be moved forward.

The 2015 triennial cycle follows the same basic timelines as the previous triennial cycles, with one slight difference is that the International Code Council moved its publication time up, will discuss dates with the agencies soon.

Publication is scheduled for July 1, 2016, making the code effective on January 1, 2017.

Chair Batjer asked commissioners whether they had any comments regarding the code cycle updates.

Commissioner Klausbruckner asked, referring to 2013 and triennial, which of the meetings or portions of the schedule are most time consuming?

In answer to a question from Commissioner Klausbruckner, Executive Director McGowan stated that of the two cycles, the triennial cycle involved the most heavy lifting by far. For example, the 2012 triennial cycle had involved close to 70 packages submitted by state agencies, whereas the intervening cycle has nearly 20 packages. The intervening cycle really concerns clean-up.

Deputy Executive Director Nearman added that prior to the July meeting will be the most intensive review period. For the triennial cycle in April 2016, would be the heavy workload meeting.

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7. FUTURE AGENDA ITEMS

Chair Batjer asked commissioners whether they had any items to be considered for placement on future agendas. None were provided.

Chair Batjer then asked the public whether there were any items to be considered for placement on future agendas and recognized Robert Raymer representing California Building Industry Association.

Mr. Raymer introduced himself as Senior Engineer representing the California Building Industry Association. Mr. Raymer suggested discussing emergency standards and possible tweaks to the statute as it relates to emergency standards at the July meeting.

He described pending issues that he believed would be surfacing more often.

The Energy Commission is pursuing significantly reduced infiltration for the 2017 standards. That has an impact on fire sprinkler installation, which the Fire Marshal deals with, and indoor air quality, which the Air Resources Board deals with. The problem is that these groups rarely interact.

Advanced lighting standards will be considered which will have fire considerations that the State Fire Marshal should be concerned about.

EV charging is being aggressively pursued in both new and existing construction. The utilities are looking forward to having this power go both ways between the battery and the grid in order to modulate certain grid fluctuations.

The Energy Commission is pursuing advanced wall assembly requirements for 2017 and high performance roof deck proposals, all of which have an impact on structural integrity, seismic stability issues, moisture intrusion, and indoor air quality structural.

The bottom line is that there are good intentions on green building, energy efficiency, energy production, and EV charging – but a great many people don't have much interaction with the long-standing code adoption process at either the national or the state level. Traditional fire safety/structural issues come into play only at the last minute, which results in emergency standard proposals.

Mr. Raymer suggested that it may be useful to hear the Commissioners' thoughts on tweaks that could be made to the statute or the administrative process.

Chair Batjer suggested that Government Operations Agency, working with BSC staff, convene working groups around some of these issues. It is preferable not to create more statute and more regulation, but to streamline existing ones and make them more sensible and usable for the public.

Commissioner Carson pointed out that the main issue of this morning's emergency findings had been missed timing between the manufacturing process and the code. He asked if input had been missed that would have permitted the manufacturers to be able to beat the code. Mr. Raymer agreed that it was a timing issue – he had seen a lack of communication between the Green Building Code Advisory Committee and the Building and Fire. He added that this was a problem not unique to California – it is also happening at the national level. He believes that the convening of working groups may be a good way to address this matter.

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Commissioner Lee emphasized the need for the BSC's approval process to move as quickly as possible, as local jurisdictions are waiting to know how they should proceed.

Commissioner Barthman commented that the BSC has had many emergencies arise – in many cases because industry does not take the review process seriously; they wait until the last minute, they jump in, and then it throws a lot of work onto different state agencies and the commission to try and change what the industry should have seen long before it came down to a final vote. The whole state process is not as involved as the model code process. He saw a need for more people to be more involved in the review process.

Mr. Raymer agreed. He cited an example where both BSC staff and Department of Housing and Community Development staff have been attempting to get input from the gas and electric industries on EV charging applications, regarding what happens on the utilities side of the meter. It has been difficult to engage them because they are not the Public Utilities Commission. And so we're making these advancements but we've got to find a way to bring in these groups before the BSC vote.

Vice-Chair Winkel commented that tinkering with emergency finding legislation is probably not going to solve the root of the problem. Instead, we need to devise a way to facilitate the involvement of the agencies at the beginning of the process.

Chair Batjer proposed to work with Executive Director McGowan in putting together a working group for these issues; it would convene at the Cabinet level.

Commissioner Mikiten asked if there were any current mechanism to facilitate the Code Advisory Committees working together. Executive Director McGowan responded that nothing formal exists. Committee members are selected by the commissioners this may be something to consider with relation to their expertise. Committee members can attend other meetings as public members and may certainly talk to each other and attend each other's meetings as public members. A huge obstacle is having committee members devote the time necessary to interact and participate.

Chair Batjer suggested communicating to the Energy Commission, the Office of the State Fire Marshal, and other such entities that a coordinated effort well communicated will save them and their staff much time; for example, they won't have to go through the emergency regulation process.

8. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no comments from the public.

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9. ADJOURN

MOTION: Commissioner Barthman moved to adjourn the meeting.
Commissioner Sasaki seconded. Motion passed unanimously.

Chair Batjer adjourned the meeting at 10:40 a.m.